



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 20 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles R. Grice, Jr.

Aurora, Colorado 80016

RE: MUR 6296
Kenneth R. Buck, et al.

Dear Mr. Grice:

On December 14, 2010, the Federal Election Commission reviewed the allegations in your complaint dated May 18, 2010, and supplemental complaint dated May 18, 2010, and found that on the basis of the information provided in your complaints, and information provided by the respondents, there is no reason to believe:

- Perry Buck violated 2 U.S.C. § 441a(a)(1)(A);
- Hensel Phelps Construction Company violated 2 U.S.C. §§ 441b and 441c;
- Cache Bank & Trust violated 2 U.S.C. §§ 441a and 441b;
- Campaign for Liberty violated 2 U.S.C. § 441b; or
- Declaration Alliance violated 2 U.S.C. § 441b.

Enclosed, you will find Factual and Legal Analyses that provide a basis for some of the Commission's decisions noted above.

On the same date, there were an insufficient number of votes to find no reason to believe:

- Kenneth R. Buck violated 2 U.S.C. §§ 441a(f) and 441b;
- Buck for Colorado and Kenneth Salazar, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b;
- Jerry Morgensen violated 2 U.S.C. § 441a(a)(1)(A); or
- Americans for Job Security violated 2 U.S.C. § 441b.

Finally, on the same date, there were an insufficient number of votes to find reason to believe that Kenneth R. Buck and Buck for Colorado and Kenneth Salazar, in his official capacity as treasurer, violated 2 U.S.C. § 441i(e).

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Accordingly, on December 14, 2010, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). One or more Statements of Reasons providing a basis for these decisions of the Commission will follow.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8). If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548.

Sincerely,

Christopher Hughey
Acting General Counsel

BY:


Roy Q. Luckett
Acting Assistant General Counsel

Enclosures

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Cache Bank and Trust MUR: 6296

I. GENERATION OF MATTER

This matter was generated based by a complaint filed with the Federal Election Commission ("the Commission") by Charles R. Grieb, Jr. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

This matter involves Kenneth R. Buck, the 2010 Republican candidate for Senate in Colorado. The complaint alleges that Cache Bank and Trust violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution to Buck, which he then improperly loaned to Buck for Colorado and Kenneth Salazar, in his official capacity as treasurer ("Buck Committee" or the "Committee").

On March 30, 2010, Buck loaned \$100,000 to his Committee, and the Committee disclosed the loan in its April 2010 Quarterly Report, Schedule C. The complaint alleges that the source of the \$100,000 was a \$120,000 bank loan from Cache Bank based on collateral – a townhouse – owned by Buck and his wife Perry Buck. Although the complaint does not specify how the loan in question violates the Act, it appears to allege that this transaction constituted an excessive or prohibited contribution from Cache Bank to Buck and the Committee because the alleged loan-to-collateral ratio represents 71.5% of the assessed value (\$167,852) of the townhouse. Complaint at 4.

1 According to Jerry Morgensen, a member of the board of Cache Bank and part owner,
2 bank employees confirmed that the loan to Buck in December 2008 was made through normal
3 procedures and approved by the loan committee.

4 Corporations are prohibited from making any federal political contributions. 2 U.S.C.
5 § 441b. The complaint did not attach any documents concerning the Cache Bank loan. Instead,
6 it attaches documents regarding ownership of the townhouse and what appears to be a
7 refinancing loan obtained by the Bucks in November 2009. According to Morgensen, the Bucks
8 obtained the Cache Bank loan in 2008 for the purpose of buying out his brothers' interest in the
9 deceased mother's home, though neither respondent knows for sure how the proceeds from the
10 loan were used.

11 **B. Analysis**

12 The complainant alleges that Cache Bank was the source of the \$100,000 that Buck
13 loaned to his Committee. Based on the available information, it appears that complainant was
14 simply incorrect about the source of the money used to fund Buck's loan to his Committee. As
15 discussed above, the Cache Bank loan cited by complainant was unrelated to Buck's candidacy
16 and repaid in full in November 2009.

17 Therefore, the Commission has determined to find no reason to believe that Cache Bank
18 and Trust violated 2 U.S.C. §§ 441a or 441b by making an excessive or prohibited corporate
19 contribution.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Campaign for Liberty MUR: 6296

I. GENERATION OF MATTER

This matter was generated based by a complaint filed with the Federal Election Commission ("the Commission") by Charles R. Grice, Jr. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Kenneth R. Buck is the Republican nominee for Senate in Colorado. His authorized committee is respondent Buck for Colorado and Kenneth Salazar, in his official capacity as treasurer ("Buck Committee" or the "Committee"). The complaint and supplemental complaint allege that around March 2009 or in the first half of 2009, Buck held interviews with prospective campaign consultants. Complaint at 3, Supplemental Complaint at 2. The complaint asserts that Buck was accompanied by Jerry Morgensen, the chairman of the board of Hensel Phelps Construction Co. ("Hensel Phelps") and a friend of Buck's. Hensel Phelps is a Greeley, Colorado, based construction company and federal government contractor. The complaint alleges that Buck informed the prospective consultants that Morgensen would contribute or spend up to or invest \$1 million or more on Buck's campaign, "presumably as an independent expenditure." Complaint at 3, Supplemental Complaint at 2. Further, the complaint maintains that Morgensen confirmed at the interviews that he was planning to "invest" \$1 million or more in connection with Buck's campaign. Complaint at 3. The supplemental complaint alleges that thereafter, pursuant to Buck's instructions, at least \$1 million has been contributed by Hensel

1 Phelps employees and/or Morgensen and “funnelled” by Morgensen and/or Hensel Phelps and
2 other individuals to several 501(c) non-profit corporations, including Campaign for Liberty
3 (“CFL”). Supplemental Complaint at 2; *see also* Complaint at 3.

4 The complaint and its supplement further allege that the funds were then used by CFL to
5 disseminate advertisements supporting Buck and opposing other candidates. *Id.* Specifically,
6 the complaint alleges that in January 2010, CFL aired a television ad attacking one of Buck’s
7 primary opponents that reportedly cost \$329,000. Complaint at 3, Complaint Exh. J.

8 The complaint argues that CFL paid for the advertisements with “excessive”
9 contributions from Buck supporters who had already reached the individual contribution limit
10 with direct contributions to Buck’s campaign. Complaint at 3-4. The complaint alleges that
11 Morgensen and/or Hensel Phelps funnelled these “contributions” from Buck supporters to CFL,
12 “intending to benefit Buck.” Complaint at 3. The complaint further alleges “upon information
13 and belief” that Buck advised Morgensen and/or other contributors to make “excessive
14 contributions” to CFL. *Id.* The complaint argues that Hensel Phelps’ effort to “funnel”
15 contributions to CFL resulted in illegal coordination, excessive in-kind contributions, and
16 prohibited corporate and government contractor contributions.

17 Buck and the Committee state that the complaint makes many conclusory allegations but
18 contains no facts. Specifically, Buck and the Committee state that “they have not cooperated
19 with, consulted with, acted in concert with, requested, or suggested that ... Campaign for Liberty
20 ... or any of their employees, officers, directors, or agents make any public communications
21 supporting Buck’s candidacy.”

22 CFL states that it ran an issue ad, which complimented Buck for completing a survey
23 form sent to all Colorado candidates, with no involvement of anyone mentioned in the complaint.

1 CFL Response, Affidavit of President John Tate, ¶¶ 4, 6. CFL also maintains that it did not
2 communicate with the Buck campaign or anyone known to be associated with it prior to running
3 the ad, and it created, produced, and ran the ad independent of any candidate or political party.
4 *Id.*, ¶ 6. Morgensen states that he has not been involved in any financial transaction with CFL.

5 **B. Analysis**

6 The complaint alleges that many Hensel Phelps employees, Morgensen, and/or other
7 Buck supporters made contributions to Ken Buck's campaign up to permissible limits then made
8 "excessive" donations to CFL so that CFL could produce and disseminate advertisements in
9 support of Buck, or attacking his opponents. The complaint suggests that Buck and his
10 committee engaged in coordinated activity with Morgensen to accomplish this plan.

11 Under the Act, corporations are prohibited from making any federal political
12 contributions. 2 U.S.C. § 441b.

13 The issue is whether the advertisements paid for by CFL were independent expenditures,
14 or were coordinated with Buck and thereby, resulted in prohibited contributions. The Act
15 defines in-kind contributions as, *inter alia*, expenditures by any person "in cooperation,
16 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized
17 political committees, or their agents" 2 U.S.C. § 441a(a)(7)(B)(i). The Commission's
18 regulations provide a three-prong test to determine whether a communication is coordinated. All
19 three prongs of the test must be satisfied to support a conclusion that coordinated communication
20 occurred. *See* 11 C.F.R. § 109.21(a).

21 The first prong of the test provides that the communication must be paid for by a person
22 other than the Federal candidate, the candidate's authorized committee, political party
23 committee, or any agent of the foregoing. 11 C.F.R. § 109.21(a)(1). For purposes of a

1 coordination analysis, "agent" is defined as, "any person who has actual authority, either express
2 or implied, to engage in [certain activities set forth below, *inter alia*]." 11 C.F.R. § 109.3(a).
3 Here, the payment prong is met as CFL paid for the advertisements at issue. The content prong
4 need not be decided because the conduct prong does not appear to be satisfied.¹

5 The conduct prong of the coordination test requires that the parties have engaged in
6 conduct that meets any of the following standards: (1) the communication is created, produced or
7 distributed at the request or suggestion or assent of a candidate, his authorized committee, or an
8 agent of the foregoing; (2) the candidate, authorized committee, or agent is materially involved
9 in decisions regarding the content, intended audience, means or mode of communication;
10 (3) there is substantial discussion about the communication between the person paying for the
11 communication and the candidate, the authorized committee, or an agent; (4) the person paying
12 for the communication and the campaign share common vendors; or (5) the communication is
13 paid for by a person or by the employer of a person who was an employee or independent
14 contractor of the candidate or candidate's committee. 11 C.F.R. § 109.21(d)(2)-(5).

15 The complaint's allegations regarding CFL fail to satisfy the conduct prong. At most, the
16 complaint alleges that "upon information and belief" Buck and/or Morgensen informed Buck
17 supporters to make donations to CFL. Buck states that he has not cooperated with, consulted
18 with, acted in concert with, requested, or suggested that CFL or any of its employees, officers,
19 directors, or agents make any public communication supporting his candidacy. In addition, CFL

¹ The content standard requires that the communication be either an electioneering communication, a public communication that disseminates, distributes, or republishes campaign materials, a public communication that expressly advocates, or a public communication that refers to a Senate candidate in the relevant jurisdiction 90 days or fewer before the election. 11 C.F.R. § 109.21(c). It appears that the ads in this case were disseminated more than 90 days before the August 10, 2010, Colorado primary election; thus, the only relevant content standard would be an express advocacy public communication.

1 specifically states that it did not communicate with Buck or anyone from his campaign regarding
2 the ads.

3 Given the complaint's lack of facts regarding Buck's conduct, Buck's statement that he
4 was not involved with the communications at issue, and CFL's specific, definitive response that
5 it had no contact with Buck, his Committee or anyone known to be associated with Buck, there is
6 not enough information to find that the advertisements were coordinated.

7 Moreover, in order to find coordination based on Morgensen's actions, the facts alleged
8 would need to establish that Morgensen was Buck's or the Committee's agent. The complaint
9 does not allege any facts to suggest that Morgensen was acting as the agent of either. Thus,
10 Morgensen's actions, if any, appear to be independent of Buck and are not relevant to a
11 coordination analysis.

12 In sum, even if Morgensen solicited donations to CFL so that it would disseminate pro-
13 Buck materials, there would not be a reason to believe the Act had been violated absent
14 allegations or information connecting Morgensen to Buck or the Committee. The complaint and
15 supplemental complaint, however, do not allege sufficient facts indicating that Morgensen was
16 an agent of Buck's or even worked on his campaign; thus, there is no information tying Buck and
17 his Committee to the communications disseminated by CFL.

18 Therefore, the Commission has determined to find no reason to believe that Campaign for
19 Liberty violated 2 U.S.C. § 441b by making prohibited in-kind corporate contributions in the
20 form of coordinated communications.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Declaration Alliance

MUR: 6296

I. GENERATION OF MATTER

This matter was generated based by a complaint filed with the Federal Election Commission ("the Commission") by Charles R. Grice, Jr. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Kenneth R. Buck is the Republican nominee for Senate in Colorado. His authorized committee is respondent Buck for Colorado and Kenneth Salazar, in his official capacity as treasurer ("Buck Committee" or the "Committee"). The complaint and supplemental complaint allege that around March 2009 or in the first half of 2009, Buck held interviews with prospective campaign consultants. Complaint at 3, Supplemental Complaint at 2. The complaint asserts that Buck was accompanied by Jerry Morgensen, the chairman of the board of Hensel Phelps Construction Co. ("Hensel Phelps") and a friend of Buck's. Hensel Phelps is a Greeley, Colorado, based construction company and federal government contractor. The complaint alleges that Buck informed the prospective consultants that Morgensen would contribute or spend up to or invest \$1 million or more on Buck's campaign, "presumably as an independent expenditure." Complaint at 3, Supplemental Complaint at 2. Further, the complaint maintains that Morgensen confirmed at the interviews that he was planning to "invest" \$1 million or more in connection with Buck's campaign. Complaint at 3. The supplemental complaint alleges that thereafter, pursuant to Buck's instructions, at least \$1 million has been contributed by Hensel

1 Phelps employees and/or Morgensen and “funnelled” by Morgensen and/or Hensel Phelps and
2 other individuals to several 501(c) non-profit corporations, including Declaration Alliance
3 (“DA”). Supplemental Complaint at 2; *see also* Complaint at 3.

4 The complaint and its supplement further allege that the funds were then used by AJS to
5 disseminate advertisements supporting Buck and opposing other candidates. *Id.* Specifically,
6 the complaint alleges that in February and March 2010, DA spent approximately \$158,000 on a
7 television ad attacking one of Buck’s primary opponents. *Id.*, Complaint Exh. I.

8 The complaint argues that DA paid for the advertisements with “excessive” contributions
9 from Buck supporters who had already reached the individual contribution limit with direct
10 contributions to Buck’s campaign. Complaint at 3-4. The complaint alleges that Morgensen
11 and/or Hensel Phelps funnelled these “contributions” from Buck supporters to DA, “intending to
12 benefit Buck.” Complaint at 3. The complaint further alleges “upon information and belief” that
13 Buck advised Morgensen and/or other contributors to make “excessive contributions” to DA. *Id.*
14 The complaint argues that Hensel Phelps’ effort to “funnel” contributions to DA resulted in
15 illegal coordination, excessive in-kind contributions, and prohibited corporate and government
16 contractor contributions.

17 Buck and the Committee state “they have not cooperated with, consulted with, acted in
18 concert with, requested, or suggested that Declaration Alliance ... or any of their employees,
19 officers, directors, or agents make any public communications supporting Buck’s candidacy.”

20 DA responds that it has not communicated directly or indirectly with anyone at the Buck
21 campaign at any time. DA Response, ¶ 1. According to DA, its ads were developed
22 independently, and DA obtained information for them from publicly available sources. *Id.*,
23 ¶¶ 2, 3. DA also maintains that there is no common vendor between DA and any campaign, and

1 media buys are public record and can be known by anyone contacting stations. *Id.*, ¶¶ 5, 6. DA
2 also states that its ads are not electioneering communications, and do not advocate supporting or
3 rejecting any candidate. *Id.*, ¶ 2. Morgensen states that he has not been involved in any financial
4 transaction with DA.

5 **B. Analysis**

6 The complaint alleges that many Hensel Phelps employees, Morgensen, and/or other
7 Buck supporters made contributions to Ken Buck's campaign up to permissible limits then made
8 "excessive" donations to DA so that DA could produce and disseminate advertisements in
9 support of Buck, or attacking his opponents. The complaint suggests that Buck and his
10 committee engaged in coordinated activity with Morgensen to accomplish this plan.

11 Under the Act, corporations are prohibited from making any federal political
12 contributions. 2 U.S.C. § 441b.

13 The issue is whether the advertisements paid for by DA were independent expenditures
14 or were coordinated with Buck and thereby, resulted in prohibited contributions. The Act
15 defines in-kind contributions as, *inter alia*, expenditures by any person "in cooperation,
16 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized
17 political committees, or their agents" 2 U.S.C. § 441a(a)(7)(B)(i). The Commission's
18 regulations provide a three-prong test to determine whether a communication is coordinated. All
19 three prongs of the test must be satisfied to support a conclusion that coordinated communication
20 occurred. *See* 11 C.F.R. § 109.21(a).

21 The first prong of the test provides that the communication must be paid for by a person
22 other than the Federal candidate, the candidate's authorized committee, political party
23 committee, or any agent of the foregoing. 11 C.F.R. § 109.21(a)(1). For purposes of a

1 coordination analysis, "agent" is defined as, "any person who has actual authority, either express
2 or implied, to engage in [certain activities set forth below, *inter alia*]." 11 C.F.R. § 109.3(a).
3 Here, the payment prong is met as DA paid for the advertisements at issue. The content prong
4 need not be decided because the conduct prong does not appear to be satisfied.¹

5 The conduct prong of the coordination test requires that the parties have engaged in
6 conduct that meets any of the following standards: (1) the communication is created, produced or
7 distributed at the request or suggestion or assent of a candidate, his authorized committee, or an
8 agent of the foregoing; (2) the candidate, authorized committee, or agent is materially involved
9 in decisions regarding the content, intended audience, means or mode of communication;
10 (3) there is substantial discussion about the communication between the person paying for the
11 communication and the candidate, the authorized committee, or an agent; (4) the person paying
12 for the communication and the campaign share common vendors; or (5) the communication is
13 paid for by a person or by the employer of a person who was an employee or independent
14 contractor of the candidate or candidate's committee. 11 C.F.R. § 109.21(d)(2)-(5).

15 The complaint's allegations regarding DA fail to satisfy the conduct prong. At most, the
16 complaint alleges that "upon information and belief" Buck and/or Morgensen informed Buck
17 supporters to make donations to DA. Buck states that he has not cooperated with, consulted
18 with, acted in concert with, requested, or suggested that DA or any of its employees, officers,
19 directors, or agents make any public communication supporting his candidacy. In addition, DA

¹ The content standard requires that the communication be either an electioneering communication, a public communication that disseminates, distributes, or republishes campaign materials, a public communication that expressly advocates, or a public communication that refers to a Senate candidate in the relevant jurisdiction 90 days or fewer before the election. 11 C.F.R. § 109.21(c). It appears that the ads in this case were disseminated more than 90 days before the August 10, 2010, Colorado primary election; thus, the only relevant content standard would be an express advocacy public communication.

1 specifically states that it did not communicate with Buck or anyone from his campaign regarding
2 the ads.

3 Given the complaint's lack of facts regarding Buck's conduct, Buck's statement that he
4 was not involved with the communications at issue, and DA's specific, definitive response that it
5 had no contact with Buck, his Committee or anyone known to be associated with Buck, there is
6 not enough information to find that the advertisements were coordinated.

7 Moreover, in order to find coordination based on Morgensen's actions, the facts alleged
8 would need to establish that Morgensen was Buck's or the Committee's agent. The complaint
9 does not allege any facts to suggest that Morgensen was acting as the agent of either. Thus,
10 Morgensen's actions, if any, appear to be independent of Buck and are not relevant to a
11 coordination analysis.

12 In sum, even if Morgensen solicited donations to DA so that DA would disseminate pro-
13 Buck materials, there would not be a reason to believe the Act had been violated absent
14 allegations or information connecting Morgensen to Buck or the Committee. The complaint and
15 supplemental complaint, however, do not allege sufficient facts indicating that Morgensen was
16 an agent of Buck's or even worked on his campaign; thus, there is no information tying Buck and
17 his Committee to the communications disseminated by DA.

18 Therefore, there is no reason to believe that Declaration Alliance violated 2 U.S.C.
19 § 441b by making prohibited in-kind corporate contributions in the form of coordinated
20 communications.